

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.Chapter 20 (Log #OS028).

These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any DEQ action or decision which is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction. The basis and rationale for this proposed rule are to comply with R.S. 30:2050.20.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A public hearing will be held on January 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS028. Such comments must be received no later than February 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS028.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Herman Robinson
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Department Administrative Procedures

Chapter 20. Records of Decision for Judicial Review

§2001. Scope and Purpose

A. These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any department action or decision that is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction.

B. These regulations do not apply to matters handled by the Department of State Civil Service, Division of Administrative Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 *et seq.*, and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:** (1999).

§2003. Definitions

Record of Decision—for purposes of this Chapter, all documents, evidence, and other items presented to, and/or actually considered by, the decision maker for the purpose of influencing the decision. This shall include, but is not limited to:

1. the record of any hearing or other proceeding held in connection with the decision or action;
2. any comments, written or oral, submitted to the department in connection with the decision or action;
3. any response to such comments issued by the department;
4. all matters officially noticed by the decision maker;
5. any written statement of the decision or action and reasons therefor; and
6. for permit actions:

- thereto;
- a. the permit application, including all supplements and amendments
 - b. any notices of deficiency issued by the department;
 - c. any responses to notices of deficiency;
 - d. any correspondence relating to the permit application;
 - e. any public notices relating to the permit action; and
 - f. the final permit, if granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 *et seq.*, and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:** (1999).

§2005. Responsibility for Assembly of Record of Decision

A. When the department is served with notice of an appeal or other request for judicial review, such notice shall be immediately forwarded to the department's Legal Division, which shall be responsible for assembling a complete and legible copy of the record of decision and transmitting it to the court.

B. Upon receipt of such notice, the Legal Division shall promptly notify the decision maker and other appropriate agency personnel, each of whom shall be responsible for promptly transmitting to the Legal Division complete and legible copies of any portions of the record that may be in his/her possession or control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 *et seq.*, and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR :25:** (1999).

§2007. Format of Record of Decision

Unless otherwise required by law or rule of court, the copy(ies) of the record that are transmitted to the court shall be assembled in the format indicated in Paragraphs 1—5 of this Subsection.

1. The main body of the record shall consist of all documents (or legible copies thereof) other than exhibits. (Exhibits are addressed in Paragraph 2 of this Subsection.) The main body shall be assembled according to the provisions of Subparagraphs a—e of this Paragraph.

a. The documents shall be arranged in chronological order, with the oldest document as the first.

b. Each page shall be consecutively numbered. The page number shall be inscribed in the lower right corner of the page, where it is possible to do so without obscuring text or other information.

c. The pages shall be on white paper, measuring eight and one-half inches by fourteen inches. The image shall be on one side of the paper only.

d. If the main body of the record contains more than 250 pages, it shall be divided into volumes of 250 pages or less.

e. Each volume shall be bound at the top, with front and back covers. The front cover of each volume shall be inscribed with:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, "Record of Decision";
- vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents;
- vii. the volume number of that volume and the total number of volumes (i.e., volume 2 of 3); and
- viii. the number of exhibits included in the record.

2. Those portions of the record that are not included in the main body are submitted as exhibits. Exhibits shall conform to the provisions of Subparagraphs a—e of this Paragraph.

a. The following items shall not be included in the main body of the record, but rather shall be submitted as exhibits:

- i. items that are larger than eight and one-half by fourteen inches, such as maps, charts, and blueprints;
- ii. bound materials, such as books and materials in loose-leaf binders; and
- iii. any other items that are too bulky or cumbersome to be efficiently included in the main body of the record.

b. Each exhibit shall be assigned a number. The numbers shall be assigned chronologically according to the date appearing on the exhibit, if any. If no date appears on the exhibit, the exhibit number shall be assigned according to the date of submittal of the exhibit to the department.

c. Each exhibit shall be labeled with the exhibit number, a brief description of the exhibit, and the date appearing thereon or the date of submittal, as applicable.

d. Exhibits shall be packaged in boxes, envelopes, or other containers in such a manner as to facilitate storage and handling. Each box, envelope, or container shall bear a label inscribed with the following information:

- i. the name of the court to which the record is directed;
- ii. the title of the action;
- iii. the docket number assigned by the court;
- iv. the division of the court to which the matter is assigned;
- v. the words, "Record of Decision";

vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents; and

vii. the exhibit number for each exhibit contained therein and the total number of exhibits (i.e., exhibits 2 and 3 of 7).

3. Confidential Documents

a. Documents or other materials that are part of the record, but have been declared confidential by the secretary in accordance with R.S. 30:2030, 2074(D), or other law, shall be submitted to the court only under seal. "Under seal" shall mean contained in sealed envelopes or boxes, which are clearly marked or labeled with the following inscription:

"CONFIDENTIAL -- FOR REVIEW BY COURT PERSONNEL ONLY. The enclosed materials have been declared confidential by the Secretary of the Louisiana Department of Environmental Quality, pursuant to La. R.S. [insert citation]."

b. Confidential materials submitted under seal, as described in Subparagraph a of this Paragraph, shall not be placed in the main body of the record nor in the exhibits. In place of

each such item the following notice shall be placed, accompanied by the secretary's written determination of confidentiality as to that item:

"NOTICE -- CONFIDENTIAL ITEM SUBMITTED UNDER SEAL. An item which would otherwise appear at this point in the record has been submitted to the court separately and under seal, because the Secretary of the Louisiana Department of Environmental Quality has declared it confidential, pursuant to La. R.S. [insert citation]. See the attached written determination of confidentiality."

4. Indexes

a. The following indexes shall be prepared:

i. a chronological index of every document in the main body of the record, showing the date, item name or description, and page number of the first page of each document;

ii. an alphabetical index of every document in the main body of the record, showing the date, item name or description, and page number of the first page of each document; and

iii. a chronological index of every exhibit in the record, showing the exhibit number and description of each exhibit.

b. A copy of each index shall be included in each volume of the main body of the record, directly beneath the front cover.

c. A copy of the exhibit index shall be placed in each box, envelope, or other container in which exhibits are transmitted to the court.

5. Certificate of Completeness and Authenticity. The first volume of the main body of the record shall contain an original certificate of the decision maker as to the completeness and authenticity of the entire record of decision. Each other volume, if any, shall contain a copy of that certificate. The certificate, or copy thereof, shall be placed after the last page of each volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 *et seq.*, and in particular, R.S. 30:2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:** (1999).

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES LOG #: OS028

Person
Preparing
Statement: Christopher A. Ratcliff Dept.: Environmental Quality
Phone: (504) 765-0236 Office: Legal Affairs and Enforcement

Return
Address: DEQ Legal Division Rule
Title: Records of Decision for Judicial
P.O. Box 82282 Review (LAC 33:I.Chapter 20)
Baton Rouge, LA 70884-2282 Date Rule
Takes Effect: Upon promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The implementation of this rule will result in no increase or decrease in costs, as compared to the current costs to the agency of preparing records of decision. The rule merely codifies procedures that the agency already follows in substantial part.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule will have no effect on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

No non-agency persons or groups would be directly affected by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule would have no impact on competition or employment.

Signature of Agency Head or Designee LEGISLATIVE FISCAL OFFICER OR DESIGNEE

J. Dale Givens, Secretary
Typed Name and Title of Agency Head or Designee

Date of Signature Date of Signature

LFO 10/05/92

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any DEQ action or decision that is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

These regulations are mandated by R.S. 30:2050.20.

- C. Compliance with Act II of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, this rule will not result in any increase in expenditures.

- 2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

| COSTS | FY 98-99 | FY 99-00 | FY 00-01 |
|------------------------|----------|----------|----------|
| PERSONAL SERVICES | 0 | 0 | 0 |
| OPERATING EXPENSES | 0 | 0 | 0 |
| PROFESSIONAL SERVICES | 0 | 0 | 0 |
| OTHER CHARGES | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 |
| MAJOR REPAIR & CONSTR. | 0 | 0 | 0 |
| POSITIONS(#) | 0 | 0 | 0 |

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The implementation of this rule will result in no increase or decrease in costs, as compared to the current costs to the agency of preparing records of decision. The rule merely codifies procedures that the agency already follows in substantial part.

3. Sources of funding for implementing the proposed rule or rule change.

No funding is required, above that already being used by the agency for record preparation activities.

| SOURCE | FY 98-99 | FY 99-00 | FY 00-01 |
|-----------------------|----------|----------|----------|
| STATE GENERAL FUND | | | |
| AGENCY SELF-GENERATED | | | |
| DEDICATED | | | |
| FEDERAL FUNDS | | | |
| OTHER (Specify) | | | |
| TOTAL | 0 | 0 | 0 |

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, the agency currently has sufficient funds to implement the rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This rule will have no fiscal or economic impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This rule will have no fiscal or economic impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

This rule will have no effect on revenue collections of state and local governmental units.

| REVENUE INCREASE/DECREASE | FY 98-99 | FY 99-00 | FY 00-01 |
|---------------------------|----------|----------|----------|
| STATE GENERAL FUND | 0 | 0 | 0 |
| AGENCY SELF-GENERATED | 0 | 0 | 0 |
| RESTRICTED FUNDS* | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 |
| LOCAL FUNDS | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 |

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This rule will have no effect on revenue collections of state and local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

No non-agency persons or groups would be directly affected by the proposed rule.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No non-agency persons or groups would be directly affected by the proposed rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule would have no impact on competition or employment.